

124 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Florida Power & Light Company

Docket No. OA07-46-001

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued August 22, 2008)

1. On March 3, 2008, pursuant to section 206 of the Federal Power Act (FPA),¹ Florida Power & Light Company (FPL) submitted its compliance filing in accordance with the Commission's January 31, 2008 order.² In this order, we accept FPL's compliance filing, as modified, to be effective July 13, 2007, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.³ Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. On July 13, 2007, FPL made its filing in compliance with Order No. 890. In the January 31 Order, the Commission accepted that compliance filing, as modified, to be

¹ 16 U.S.C. § 824e (2006).

² *Florida Power & Light Co.*, 122 FERC ¶ 61,079 (2008) (January 31 Order).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008).

effective July 13, 2007. The Commission also directed FPL to file, in a compliance filing to be submitted within 30 days of the date of the order, revised language explaining its proposal to allocate the costs of new facilities among the participants of a cluster study, as well as other revisions. In compliance with that order, FPL made a further filing, which we address below.

II. Compliance Filing

4. FPL states that it filed the majority of the revised tariff sheets for the purpose of changing the effective date from May 14, 2007, to July 13, 2007, in compliance with the January 31 Order's directives. Additionally, FPL made the following tariff revisions in accordance with the January 31 Order: (1) section 2.2 (Rollover Rights) on Sheet Nos. 23-24 is revised to reinstate pre-existing language; (2) section 7.4 (Unreserved Use) is incorporated into Sheet No. 35 to address unreserved use and to apply unreserved use penalties to all transmission customers; (3) sections 28.6 (Restrictions on Use of Service) and 30.4 (Operation of Network Resources) are revised to reinstate pre-existing language on Sheet Nos. 103-104 and 115-116, respectively; (4) section 15.0 of Attachment A-1 on Sheet Nos. 172-173 is deleted as obsolete; (5) section 19.10 (Clustering of Transmission Service Requests) contains revisions to Sheet Nos. 87-89; and (6) schedules 4 (Energy Imbalance Service) and 9 (Generator Imbalance Service) are revised to include language regarding the distribution of imbalance penalty revenues on Sheets Nos. 146-147 and 159-161, respectively.

III. Notice of Filing and Responsive Pleadings

5. Notice of FPL's compliance filing was published in the *Federal Register*, 73 Fed. Reg. 13,879 (2008), with interventions and protests due on or before March 24, 2008. Florida Municipal Power Agency (FMPA) and Seminole Electric Cooperative, Inc. (Seminole) filed a joint limited protest.

IV. Discussion

FMPA and Seminole's Protest

6. FMPA and Seminole argue that section 19.10 of FPL's OATT, regarding the clustering of Transmission Service Requests (TSRs), is unclear and requires edits to comply with Commission policy. They refer to FPL's proposed language in section 19.10, which states:

Eligible Customers agreeing to be clustered in the System Impact Study must also agree: (i) to remain in the cluster throughout the performance of a Facilities Study, if needed; and (ii) to share in the cost of Network Upgrades that are determined to be required to accommodate the cluster of

TSRs in proportion to each Eligible Customer's share of the total MW capacity requested by the cluster for purposes of determining the charges that each must pay in accordance with Commission Policy.^[4]

7. FMPA and Seminole contend that the first clause is unclear, because it appears to conflict with a subsequent sentence in section 19.10 providing that, "Eligible Customers may withdraw from a cluster study only by withdrawing their respective TSR."⁵ Further, FMPA and Seminole claim that the first clause conflicts with the January 31 Order, which allowed customers to withdraw their TSRs. They assert that the first clause should be modified to eliminate any ambiguity that might prevent an Eligible Customer from withdrawing its TSR.

8. FMPA and Seminole additionally assert that the second clause of the above-quoted language is ambiguous and may be inconsistent with Commission policy. They argue that the second clause assumes that Eligible Customers must share the cost of Network Upgrades, which would conflict with the Commission's "higher of" pricing policy.⁶ They contend that while the second clause contains a reference to Commission Policy, that reference is at the end of the provision and it is not clear whether it overrides the initial portion of the second clause providing that "Eligible Customers agreeing to be clustered in the System Impact Study must also agree . . . to share in the cost of Network Upgrades"⁷

9. To clarify these two matters, FMPA and Seminole suggest the following revisions:

Eligible Customers agreeing to be clustered in the System Impact Study must also agree: (i) to remain in the cluster throughout the performance of a Facilities Study (unless the Eligible Customer withdraws its TSR), if needed; and (ii) ~~to share in that~~ the cost of Network Upgrades that are determined to be required to accommodate the cluster of TSRs shall be allocated in proportion to each Eligible

⁴ FMPA and Seminole Protest at 2, citing Second Revised Sheet No. 88.

⁵ *Id.*, citing Original Sheet No. 88A.

⁶ "Higher of" pricing refers to the Commission's policy of requiring a transmission customer whose TSR requires network upgrades to be constructed to pay the higher of the incremental cost of the upgrade or the average embedded transmission rate for the term of the service.

⁷ FMPA and Seminole Protest at 3, citing Original Sheet No. 88A.

Customer's share of the total MW capacity requested by the cluster for purposes of determining, in accordance with Commission Policy, the charges that each must pay ~~in accordance with Commission Policy~~.

10. FMPA and Seminole assert that the revised language clarifies that the FPL cluster study provisions permit an Eligible Customer to withdraw its TSR, eliminates any presumption that the Eligible Customer must pay for Network Upgrades, and clarifies that Commission Policy governs the charges that the Eligible Customer must pay. FMPA and Seminole also state that FPL finds the proposed revisions acceptable.

Commission Determination

11. We accept FPL's compliance filing, as modified, effective July 13, 2007. We find that the revisions to its tariff sheets, with the modification to section 19.10 discussed below, comply with the directives of the January 31 Order.

12. We agree with FMPA and Seminole that the first clause of FPL's proposed section 19.10 is unclear and should be modified. In the January 31 Order, the Commission found that the language proposed by FPL in its answer to allow a customer to withdraw from a cluster study by entirely withdrawing its TSR was just and reasonable.⁸ However, FPL's proposed tariff language in this filing is unclear and open to different interpretations. FMPA and Seminole's proposed revisions, which are acceptable to FPL, remove this uncertainty and ensure that an Eligible Customer can withdraw its TSR during the time in which a Facilities Study is being performed.

13. In addition, we agree with FMPA and Seminole that the second clause of FPL's proposed section 19.10 is also unclear and should be modified. FMPA and Seminole's proposed revisions, which are acceptable to FPL, remove any uncertainty and make clear that Commission policy will govern the charges that an Eligible Customer must pay.

14. Accordingly, we direct FPL to modify its tariff to reflect the revised language set forth by FMPA and Seminole, and to submit a compliance filing, within 30 days of the date of this order, reflecting such revised tariff language.

15. We also note that, in section 19.10 (v), FPL proposes that the transmission provider offer to cluster more than one TSR if it "can reasonably accommodate the cluster study within the 60-day study period provided for under this Tariff in light of the complexity involved in studying multiple requests for service simultaneously and the

⁸ January 31 Order, 122 FERC ¶ 61,079 at P 46.

time needed to perform such study”⁹ Consistent with *Idaho Power*, we find that when a transmission provider has a provision in its OATT allowing for the clustering of studies, it should not reject cluster requests solely on the basis that such clustered studies may require extended study timelines.¹⁰ If FPL believes that a cluster study could prevent it from meeting the OATT requirements, it is free to raise this issue as an extenuating circumstance in a notification filing with the Commission, which will be reviewed on a case-by-case basis.¹¹ Therefore, we direct FPL to file, within 30 days of the date of this order, a compliance filing removing the language from section 19.10(v) that allows FPL to decline to cluster studies if it determines that granting a clustering request would ultimately cause FPL’s failure to comply with any deadline set forth in the OATT.

The Commission orders:

(A) FPL’s compliance filing, as modified, is hereby accepted, to be effective July 13, 2007, as discussed in the body of this order.

(B) FPL is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ Second Revised Sheet No. 88. This language is similar to language previously rejected by the Commission in the January 31 Order. *See* January 31 Order, 122 FERC ¶ 61,079 at P 44.

¹⁰ *Idaho Power Co.*, 122 FERC ¶ 61,243, at P 21 (2008) (*Idaho Power*).

¹¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1342-43.